THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No.8538 of 2007

Dated: 19.12.2007

Between:

E.Venkataramanaiah

..... PETITIONER

And:

The Commissioner of Civil Supplies and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No.8538 OF 2007

ORDER:

1. Heard Sri Syam Sunder Rao, the learned counsel representing the writ petitioner and the learned Assistant Government Pleader for Civil Supplies representing the respondents.

2. The writ petition is filed for a writ, order or direction more particularly in the nature of writ of Mandamus, declaring the action of respondents 1 and 2 in issuing proceedings bearing CCS Progs.No.E2/1131/2001, dated 26.03.2007, and Rc.No.D/82/06, dated 25.01.2007 respectively, cancelling licence No.4/86 of the petitioner in respect of Shop No.25015 (Manuguru-II), Manuguru Mandal, Khammam District as illegal, arbitrary, unconstitutional and contrary to the provisions of Clause 28(1) of A.P. Petroleum Products (Licensing and

Regulation of Supplies) Order, 1980 (for short 'the Control Order').

3. Sri S.Syam Sunder Rao, the learned counsel representing the writ petitioner, has taken this Court through the contents of the affidavit filed in support of the writ petition, and the also the counter affidavit and would maintain that no reasonable opportunity had been given and the writ petitioner was not permitted to let in the oral evidence and hence, a further opportunity has to be given to the writ petitioner, in the facts and circumstances of the case.

4. Learned Assistant Government Pleader for Civil Supplies representing the respondents had taken this Court through the contents of the counter-affidavit and would maintain that there is no procedural irregularity or illegality and in the light of the nature of the orders made, the writ petition being devoid of merits, is liable to be dismissed.

5. It is stated that the petitioner belongs to minority community and lives below the poverty line. After following the procedure, the 3rd respondent granted licence No.4/86 under Clause 4(2) of the Control Orders in respect of Shop No.25015 (Manuguru-II) of Manuguru Mandal, Khammam District, authorizing the petitioner to purchase, sell or store kerosene, for a period of one year and renewed the same from time to time, which is valid up to 31.12.2008. It is also stated that the petitioner has been performing his services without any complaint for more than

20 years.

6. It is further stated that on 31.07.2006, 3rd respondent inspected the shop of the petitioner situated in the house of Dodapuneni Seshaiah and on verification of stock register, he allegedly noticed that the petitioner had shown distribution of 2304 liters up to the time of inspection, and on physical measurement, found the ground stock of kerosene as 300 liters and there was variation of 255 liters of excess found in ground stock instead of balance shown in the stock register as 50 liters and further alleged that the petitioner is alleged to have been doing clandestine business in PDS Kerosene by not showing the true and correct accounts of kerosene oil hawker ship.

7. Further, it is averred that in the month of July 2006, the petitioner lifted 2349 liters of kerosene and distributed the same to 383 coupon holders each 6 liters and thus, the petitioner had distributed 2,298 liters and for the balance of kerosene of 50 liters as backlog in the stock register and on 31.07.2006, the 3rd respondent had surprised his shop and allegedly found 250 liters of excess in his report. Then, the petitioner furnished the all true and correct accounts and coupons on 02.08.2006, and further staed that the allegedly seized kerosene oil does not belong to him and he is no way concerned with that and that he has no objection to confiscate the same to the Government.

8. It is also stated that the 3rd respondent filed a

complaint before the 2nd respondent against the petitioner under Section 6-A of the Essential Commodities Act, 1955 and also initiated departmental action against the petitioner, for contravening Clause 12(1)(ii) of the Control Order and violating Condition No.9 of the Form-BB Licence. The 2nd respondent, in turn, passed the impugned order, dated 25.01.2007, cancelling the licence of the petitioner, without considering the facts and without following the procedure prescribed under law, which is *ex facie* illegal, arbitrary and unconstitutional.

9. It is further stated that the petitioner preferred an appeal before the 1st respondent against the order, dated 25.01.2007, contending that the 2nd respondent did not examine any panchanama witnesses and conduct enquiry, which is mandatory on his part under Clause 28(1) of the Control Order. He also explained the fact that he along with one Mr.Sambaiah made a complaint against one Mr.Ganneboyena Srinu, who is brother of kerosene hawker, Manuguru, Khammam District, to the 3rd respondent but the 3rd respondent did not take any action him, more over, at the behest of the above said person, the cancellation order had been passed by the 2nd respondent on 25.01.2007.

10. It is further stated that the petitioner has also filed a representation of the consumers of the village stating that he has not committed any mistakes and requesting to continue the petitioner as kerosene hawker of Manuguru

Village, for fair distribution of kerosene. But, the 1st respondent simply dismissed the appeal through his order, dated 26.03.2007, confirming the order of the 2nd respondent, by observing that the petitioner cannot raise the ground that the 2nd respondent cancelled the licence, without examining any panchanama witness at the appeal stage and the same is arbitrary, unconstitutional and against the principles of natural justice.

11. It is also averred that the 2nd respondent committed a palpable error by not following the legal position and without conducting any enquiry, which is permissible under sub-clause (1) of Clause 28 of the Control Order, that too when the petitioner raised an objection that the allegedly seized 300 liters of kerosene does not belong to him and he already submitted coupons and asked for conducting a detailed enquiry by submitting his explanation on 24.11.2006.

12. It is further specified that without conducting enquiry, as required under Clause 28(1) of the Control Order and also as per the Judgment of this Court in **Gummadisetti vs. Joint Collector, Khammam**[1], and even without examining the panchanama witnesses, the impugned order had been passed by the 2nd respondent and the same is illegal. It is also stated that the impugned order was passed at the instance of certain others.

13. In the counter affidavit filed, it is averred that as part of the regular inspections the Mandal Revenue

Officer, Manuguru, has inspected the shop of the petitioner and found 300 liters of kerosene in two iron drums in the open verandah of the premises. On verification of stock register, it is revealed that there was only a balance of 50 liters of kerosene as on 31.07.2006 and the said kerosene was seized under cover of panchanama and a case is filed under Section 6-A of the Essential Commodities Act, 1955 before the Joint Collector, Khammam.

14. It is further stated that the petitioner had lifted 2349 liters of kerosene and distributed 2304 liters of kerosene to cardholders as per the Issue Register. Instead of balance quantity of 45 liters, 255 liters excess quantity was found in the hawker point. The petitioner has handed over only 41 coupons in the Mandal Revenue Officer's Office, Manuguru, instead of 383 coupons stating that he has not collected the coupons from the cardholders at the time of distribution, which shows that the petitioner had kept the balance kerosene with a view to divert it illegally into black market.

15. It is further stated that the Joint Collector, Khammam, has not committed any error and has rightly cancelled the licence of the petitioner. In fact, the petitioner has confessed before the Mandal Revenue Officer, Manuguru, that he committed mistake and requested to excuse for the lapse in his statement, dated 14.09.2006.

16. It is further stated that the Joint Collector, Khammam, after giving sufficient opportunity to the petitioner and considering the material available on record

by following the due procedure of law as required under Clause 28(1) of the Control Order has cancelled the licence, since it was found that the petitioner has contravened Clause 12(1) (ii) of the Control Order and has also violated condition No.9 of the Form-BB Licence. Hence, the contention of the petitioner that the impugned orders are illegal is not tenable.

17. It is further stated that the consumers of the Village have again caught hold of the petitioner red handedly along with an auto at the time of diverting 180 liters of kerosene illegally on 30.10.2006 and in this connection, a case in Crime No.11 of 2007 of Manuguru Police Station has also been registered and the petitioner was remanded to sub-jail.

18. It is further stated that another case has been filed Under section 6-A of the Essential Commodities Ac, 1955 against the petitioner for variation of ground balances, which is pending in the Court of Joint Collector, Khammam, in M.C.No.153 of 2006,which shows that he is habitually committing irregularities, acting against the interest of the consumers.

19. It is further stated that the contention of the petitioner that the licence was cancelled without conducting enquiry is not correct. The authorization of the petitioner was cancelled only after following the due procedure as required under clause 28(1) of the Control Order.

20. Learned counsel for the writ petitioner

placed strong reliance on **Gummadisetti**'s case (1 supra), wherein a Division Bench of this Court observed as under:

> "It is needless to observe that the enquiry initiated against the appellant under sub-Clause (1) of Clause 28 of the Control Order shall go on strictly in accordance with law, uninfluenced by any of the observations made in that order as well as the observations made by the learned single judge. The licensing authority is required to provide an adequate opportunity to the appellant herein and if necessary, permit him to lead evidence in support of his case, both documentary as well as oral. The objections preferred and the evidence made available by the appellant shall be taken into consideration before an appropriate decision is taken by the licensing authority under sub-clause (1) of Clause 28 of the Control Order."

21. The order, dated 25.01.2007, made by the Joint Collector, Khammam- 2nd respondent herein reads as under:

> The Mandal Revenue Officer, Manuguru vide ref. 1st read above has filed a case against Sri E.Venkata Ramanaiah, Kerosene Hawker, Manuguru-II (Shop No.25015) u/s 6-A of the E.C.Act.1955 in the court of Joint collector, Khammam for improper maintenance of accounts and having excess stock of 255 liters of PDS kerosene with him. The case has been taken on file and initiated action u/s. 6-A of the E.C.Act, 1955. It has also been decided to initiate departmental action against the said kerosene hawker for contravening the clause 12(1) (ii) of A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 and violation of the condition 9 of the B-B Form licence issued

under clause 4(2) of the said control order.

The report of the Mandal Revenue Officer, Manuguru reveals that during his inspection of the shop premises on 31.07.06, at about 4.30 p.m., he found 1255 liters of PDS kerosene in excess on ground when compared to the stock and issue register as shown below.

i) Total quantity of kerosene oil lifted by the hawker :: 2349 Liters
as per stock register

ii) Sales as per issue register :: 2304 Liters

iii) Balance to be available with hawker :: 45 Liters.

iv) Balance shown in the stock register :: 50 Liters

v) Physically available with hawker point:: 300 Liters

There upon a notice as required under the provision of clause 28(1) of A.P.P.P.(L&RS) 1980 has been issued to Sri E.Venkata Ramanaiah, Kerosene Hawker to show cause as to why his BB-Form licence should not be cancelled vide ref. 2nd read above which has been served on 20.09.2006.

On 06.10.06, Sri K.Ramesh , Advocate present and filed vakalat and case posted on 13.10.06 for further hearing. The case has been adjourned from time to time as the counsel requested time. On 24.11.06, the Hawker also present and filed written explanation in Telugu version. He has submitted that he has no other explanation to offer and requested to decide the case on merits based on material. But, the counsel has prayed time for arguments and as such the case was posted on 08.12.2006.

His explanation reveals that he has been working as kerosene hawker since 1986 without any

remarks either from the public or from the officials. During the month July, 2006, he has lifted 2349 liters of kerosene oil. Due to ill health, the kerosene oil was distributed through his nephew in his presence to all the cardholders and his shop was also closed on 29.07.2006. He states that he has distributed the kerosene to 383 coupon holders i.e., 383x6=2298 liters leaving a balance of 50 liters shown as backlog. The Mandal Revenue Officer has inspected the shop on 31.07.2006 and reported that, there is excess stock of 250 liters of.

In his explanation he has stated that he has given deposition before the Mandal Revenue Officer on the day of inspection stating that the excess kerosene oil don't belongs to him and he does not know to whom it belongs. He has further stated that in Manuguru Mandal, some of the card holders are selling the kerosene oil to the other persons. On 26.10.2006, the Mandal Revenue Officer, caught hold one person who purchased the kerosene from the card holders.

Finally, he has requested to take sympathetically view and to do justice.

The counsel present on 08.12.2006 and 05.01.2007, but he has not filed explanation despite adequate opportunity and even after giving final chance. Therefore, it is decided to dispose the case on the basis of merits and reserved for orders. However, the counsel has been given a chance to file his further explanation, if any, on or before 12.01.2007.

Accordingly, on 12.01.2007, the counsel for the respondent filed written explanation stating that, he never violated any provision as alleged; that he had maintained true and correct account; but due to political disputes in the village and pressures made by his opponents, the complainant made a

false case. He has also stated that, in the month of July, 2006, he lifted 2349 liters of kerosene and distributed 2298 liters to 383 coupon holders @ 6 liters per coupon and shown 50 liters as back log in the stock register that on 29.07.2006 the Revenue authorities have checked his shop and satisfied with the same that again on 31.07.2006 the complainant had again surprised his shop and allegedly found 250 liters of kerosene oil excess, that he submitted entire coupons on 02.08.2006 for the said kerosene of 2298 liters. He has further stated that, the seized 250liters does not belong to him and he has no objection to confiscate the same and to release 50 liters in his favour.

Finally he has stated that, he is maintaining true and correct records and handed over the coupons to the Mandal Revenue Officer and requested to drop the proceedings against him.

The case has been examined. The report of the Mandal Revenue Officer, Manuguru and panchanama conducted on 31.07.2006 reveals that 300 liters of PDS Kerosene oil was available in the premises of the shop of kerosene hawker. He has closed the account on 31.07.2006 and shown only 50 liters as back log with an intention to divert the stock into black market. He is only responsible for the stock available in the premises of his shop and trying to escape from the case by stating that the seized stock does not belong to him. It is clear case of violation of condition 9 of the BB Form licence and contravening the clause 12 (1) (ii) of APPP (L&RS) Order, 1980.

Taking into consideration of the above facts, the licence bearing No.4/86 issued under APPP (L&RS) Order, 1980 to Sri E.Venkata Ramanaiah, Kerosene Oil Hawker, Shop No.25015 (Manuguru –II) of Manuguru (M) is hereby cancelled under

clause 28 (1) of APPP (L&RS) Order, 1980.

An appeal against this order shall lie before the Director of Civil Supplies, A.P., Hyderabad, within 30 days from the date of receipt of this order."

22. The order, dated 26.03.2007, made by the Commissioner of Civil Supplies, A.P., Hyderabad-1st respondent herein, reads as under:

"This is an appeal filed by Sri E.Venkata Ramanaiah, Kerosene oil hawker, Manuguru Village, Khammam District, under clause 31 of the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980, challenging the orders of the Joint Collector, Khammam District in proceedings No.Rc.D/82/2006 dated 25.01.2007, cancelling Form-BB licence.

Brief details of the case are that the Mandal Revenue Officer, Manuguru has reported to the Joint Collector, Khammam that he was inspected the business premises of Sri E.Venkata Ramanaiah, Kerosene hawker, Manuguru on 31.07.2006, and found 300 liters of kerosene, but the hawker shown only 50 liters as balance in the records and thus 250 liters of PDS kerosene is in excess of the Stock and Issue Register compared to the ground balance.

Basing on the report of the Mandal Revenue Officer, Manuguru, the Joint Collector, Khammam has issued a show cause notice, dated 18.09.2006, to the kerosene hawker to show cause as to why his Form-BB licence should not be cancelled.

The kerosene hawker has submitted explanation on 24-11-06. Since the counsel for the respondent has prayed time for arguments, the Joint Collector, has adjourned the case. On 12.01.2007, the counsel for the respondent filed

written arguments before the Joint collector, Khammam. Examining the case, the Joint Collector, Khammam, cancelled Form-BB licence of the hawker under clause 28(1) of the A.P. Petroleum Products (L&RS) Order, 1980, in proceedings No.Rc.D/82/2006, dated 25.01.2007.

Challenging the orders of the Joint Collector, Khammam, dated 25.01.2007, Sri E.Venkataramanaiah, Kerosene Hawker, Manuguru filed the present appeal adducing the following grounds as hereunder:

"The lower court erred in cancelling the licence of the appellant herein under clause 28(1) of APPP (L&RS) Order, 1980, and disallowing the objections of the appellant, is manifest injustice, not exercising the jurisdiction vested in it and prima-facie error committed by the Hon'ble Joint Collector, Khammam, Khammam District.

The lower court erred in saying that, this appellant is trying to escape from the case, without considering the facts and documents submitted by the appellant is against principles of natural justice.

The lower court without examining any witness and the public opinion including the panchanama witnesses, cancelled the licence bearing No.4/86 issued under APPP (L&RS) Order, 1980, which is illegal and arbitrary and against principles of natural justice.

The lower court failed to appreciate the fact, that on 31.07.2006 he surprised my shop situated in the house of Dodapuneni Seshaiah and on verification of the stock register, the 2nd respondent alleged to have noticed that the appellant had shown distribution of 2304 liters upto the time of inspection, he had physically measured the ground stock of kerosene and allegedly found 300liters of kerosene oil and their

was variation of 225 liters of excess found in the ground stock instead of balance shown in the stock register 50 liters etc., and the 2nd respondent further alleged that the appellant did not distribute the PDS kerosene to the cardholders an he found that I alleged to have doing clandestine business in PDS kerosene by not showing the true and correct accounts of Kerosene oil hawker-ship.

The Hon'ble Joint Collector/respondent No.1 committed a palpable error by not following the legal position that without conducting any evidence in support of his case i.e., the second respondent, which is permissible under sub-clause (1) of Clause 28 of the APPP (L&RS) Order, 1980. Moreover in this instant case when the objection raised by this appellant that the alleged seized 300 liters of kerosene don't belong to him and he already submitted coupons. The appellant also stated that, there is no objection to confiscate the seized kerosene, as the same don't belong to him and asked for conducting detailed enquiry regarding this incident. The appellant along with his explanation dated 24.11.2006 and argument advanced by the learned advocate before the 1st respondent, and the 1st respondent ought to have allowed the objections or least should have been examined.

It is settled law that, without conducting any oral enquiry or documents, is against principles of natural justice, as the appellant is very much interested to submit his evidence of documentary and oral evidence before the 1st respondent, but the 1st respondent not conducted any examination, which is against the principles of natural justice. Hence, this Appellant begs to stand before your Lordship.

The order of the 1st respondent, vide Rc.No.D/82/06, dated 25.01.2007, cancelling the licence bearing No.4/86 issued under APPP (L&RS) Order, 1980, to the appellant, Kerosene Oil Hawker, shop No.25015 (Manuguru-II) of Manuguru (M), Khammam district, if allowed to stand would result in miscarriage of justice and thus, the order of the lower court is liable to be set aside."

The appeal case heard on 09.03.2007. The learned counsel for the petitioner attended and reiterated the grounds mentioned in the appeal petition and also filed written arguments.

While producing a copy of judgment of Hon'ble High Court, Hyderabad, in W.P.No.2199/2003, the Advocate has argued that as observed by the High Court, the licensing authority is required to provide adequate opportunity to the appellant and if necessary permit him to lead evidence in support of the case, both documentary as well as oral, but in this case the Joint Collector, Khammam without conducting enquiry properly, examining the witness and also panchanama witness, passed orders cancelling the licence of the appellant. He has also argued that the impugned order has been passed only at the behest of one Mr.Ganneboyena Srinu, brother of the FP Shop dealer, Manuguru, since the appellant along with one Ch.Sambaiah made a complaint against Srinu on 22.08.2006 saying that he is committing mischievous things with regard to distribution of cards.

The counsel for the appellant has requested to set aside the order of the Joint Collector, Khammam in Progs. Dated 25.01.2007 in Rc.No.D/82/2006 cancelling the licence and consequently, to direct to continue the supply of kerosene to the licensee.

I have gone through the material placed before me and the arguments of the counsel for the appellant. As seen from the records of the lower Court, the MRO, Manuguru and panchanama witnesses have found 300 liters of kerosene in the hawker point in 2 drums (200 liters in one drum and 100 liters in another drum) though he has shown only 50 liters as balance in the stock register. The explanation of the hawker is that he has no objection to confiscate the 250 liters of kerosene excess allegedly found and it is necessary to release 50 liters of seized kerosene in favour of him.

It is pertinent to mention that how the hawker requested the Joint Collector, Khammam to release 50 liters of kerosene to him and that he had no objection to confiscate 250 liters when seized kerosene of 200 liters was in one drum and 100 liters in another drum. As such, the explanation of the hawker and the argument of his counsel that the alleged seized quantity of 250 liters of kerosene does not belongs to him is not convincing.

The argument of the counsel for the appellant is that the impugned order has been passed only at the behest of one Mr.Ganneboyena Srinu, brother of the FP Shop dealer, Manuguru, as the appellant along with one Ch.Sambaiah made a complaint against Srinu on 22.08.2006 saying that he is committing mischievous things with regard to distribution of cards and the Joint Collector, Khammam without conducting enquiry properly, examining the witness and also panchanama witness, passed orders cancelling the licence of the appellant.

As seen from the record of the Joint Collector, Khammam, the licensee has not raised the said contention before the Joint Collector, Khammam.

Further, the counsel has not produced a copy of complaint said to be made by the appellant and one Ch.Sambaiah, before the appellate authority.

Further, the Joint Collector, Khammam has adjourned the case even after submission of explanation on 24.11.2006 at the request of the hawker/advocate for the hawker to 08.12.2006; 05.01.2007 and 12.01.2007. On 12.01.2007, after receipt of another explanation by the licensee and examining the case, the Joint Collector, passed the orders cancelling the licence, as such the contention of the counsel that the orders have been passed without conducting enquiry properly is far from truth as the Joint Collector, Khammam has given adequate opportunity to the hawker to represent his case.

As the distribution of essential commodities under PDS is intended for vulnerable sections of the society and the kerosene oil is ought to be distributed to the cardholders, any diversion of kerosene oil is not only clear violation of the Government instructions but also defeat the main objective of the A.P. Petroleum Products (Licensing & Regulation of Supplies) Order, 1980.

In view of the above, I see no merit in the case to interfere with the orders of the Joint Collector, Khammam, dated 25.01.2007 in Rc.No.D/82/2006 cancelling Form-BB licence of E.Venkataramanaiah, hawker, Manugur. Accordingly, the appeal is dismissed."

23. Hence, in the light of the facts and circumstances of the case, it cannot be said that the writ petitioner was not given a reasonable opportunity. It may be true that when a request made for examination of the witnesses, has been refused, it may be raised as a ground

stating that no reasonable opportunity had been given. As can be seen from the reasons, which had been recorded, this appears to be not the case of the writ petitioner. That being so, in the light of the findings recorded by the primary authority and also the appellate authority, this Court is satisfied that the writ petition is devoid of merits.

24. Accordingly, the writ petition is dismissed. No order as to costs.

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(P.S.NARAYANA, J)

Dated: 19.12.2007
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THE HON'BLE MR JUSTICE P.S.NARAYANA

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WRIT PETITION No.8538 of 2007

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Dated:19.12.2007

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